



7050-01

## **LEGAL SERVICES CORPORATION**

### **Final Agricultural Worker Population Estimates for Basic Field—Agricultural Worker/Migrant Grants**

**AGENCY:** Legal Services Corporation

**ACTION:** Notice

**SUMMARY:** The Legal Services Corporation (LSC) announces implementation of new population estimates of agricultural workers that LSC will use for distribution of funds among grants for providing civil legal services to those workers and their dependents (Agricultural Worker Grants, formerly referred to as Migrant Grants). LSC will phase in application of these updated estimates over two years. For all Agricultural Worker Grant service areas, one half of the transition will occur in 2017 and the full changes will occur in 2018. This action takes into consideration public comments received as a result of three notices for public comment LSC published in the Federal Register. 80 FR 5791 (February 3, 2015); 81 FR 6295 (February 5, 2016); and 81 FR 19245 (April 4, 2016). LSC will also obtain updated population estimates of agricultural workers every three years for recalculation on the same statutory cycle as LSC obtains updated poverty-population data from the U.S. Census Bureau for the distribution of LSC's Basic Field Programs appropriation. Future changes in Agricultural Worker Grants based on updated population estimates will be implemented in a single year and not phased in, consistent with how LSC implements changes in the distribution of Basic Field

grants. This notice summarizes LSC's development of the final estimates and discusses the revisions LSC made in response to public comment.

**DATES:** Effective {INSERT DATE 30 DAYS AFTER PUBLICATION}.

**FOR FURTHER INFORMATION, CONTACT:** Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202-295-1623 (phone); 202-337-6519 (fax); [mfreedman@lsc.gov](mailto:mfreedman@lsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

This notice completes the Legal Services Corporation's (LSC) process of revising the estimates of LSC-eligible agricultural workers for distribution of funds through Basic Field—Agricultural Worker Grants (Agricultural Worker Grants, formerly referred to as Migrant Grants). LSC provided a detailed background and discussion of the need for updating these estimates in the notice for public comment published in the Federal Register on February 3, 2015. 80 FR 5791. LSC has posted at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) all notices, comments received, and materials relating to this process.

Briefly summarized, LSC will revise these population estimates for three reasons. First, the estimates currently used are based on outdated information from the late 1980s and early 1990s. Second, the estimates currently used do not include the entire population of agricultural workers that LSC expects grantees to serve with Agricultural Worker Grants, which includes both migrant and non-migrant agricultural workers (this also explains the change in the name of these grants from

Migrant Grants to Agricultural Worker Grants). Third, the current estimates do not take into account the portion of the population that is not eligible for LSC-funded legal services.

LSC contracted with the Department of Labor’s Employment and Training Administration (ETA) to obtain updated estimates of the size and distribution of the population of agricultural workers and their dependents eligible for LSC-funded services. ETA subcontracted with JBS International, Inc. (JBS or ETA contractor) to use Department of Labor and other government data to develop these estimates. In January 2015, ETA provided LSC with JBS’s initial estimates (including state-by-state breakdowns) which ETA determined were technically sound. *See* Memorandum from the U.S. Department of Labor Employment and Training Administration (January 21, 2015) transmitting the JBS memorandum “Estimating the National Size and State Distribution of the LSC-Eligible Population” (January 19, 2015) at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (February 2015 Notice—Initial Estimates, LSC Management Report Appendices, Appendix A).

On February 3, 2015, LSC published a notice in the Federal Register seeking comments on LSC’s proposal to implement the January 2015 methodology and resulting estimates provided by ETA. 80 FR 5791. *See* “LSC Management Report—LSC Agricultural Worker Population Estimate Update” (January 30, 2015) at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (February 2015 Notice—Initial Estimates, LSC Management Report). In response to this notice, LSC received eleven comments, which LSC has published at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data). Based on those

comments, LSC obtained revised estimates from ETA, which LSC published on its website and through the Federal Register for further public comment along with LSC's response to the first eleven comments on February 5, 2016. 81 FR 6295, and [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (February 2016 Notice—Revised Estimates). In support of the notice, LSC provided a comprehensive table detailing specific data sources and revised calculations. *See* “Table I—Updated Estimates of the Size and Geographic Distribution of The LSC-Eligible Agricultural Worker Population and the Sources and Calculations Used to Develop Those Estimates” (January 20, 2016) at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (February 2016 Notice—Revised Estimates, Tables I–VII). In response to the second notice LSC received three comments that are discussed in detail below.

On April 4, 2016, LSC published on its website and in the Federal Register a notice for comment on a proposal from the Michigan Advocacy Program (MAP) to use certain Michigan-specific estimates. 81 FR 19245, [and www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (April 2016 Notice—Revisions to the Michigan Estimate). LSC received one comment from MAP itself in response to this notice. MAP's comment included 2015 administrative data to support its view that LSC should adjust certain assumptions underlying the estimates of dependents eligible for LSC-funded services.

LSC asked ETA to review the three comments filed in response to the second notice and MAP's additional comment to identify which, if any, of the commenters' recommendations would improve the accuracy of the estimates of the LSC-eligible agricultural worker population and, as appropriate, provide revised estimates of the

LSC-eligible agricultural worker population. ETA subcontracted with JBS to perform this work. ETA transmitted to LSC the JBS analysis, which ETA found technically sound. *See* Memorandum from the U.S. Department of Labor Employment and Training Administration (July 26, 2016) transmitting the JBS memorandum “Assessment of Technical Comments Concerning the Methodology for Estimating the Number and Geographic Distribution of Agricultural Workers Who are Eligible for Services Provided by the Legal Services Corporation (LSC), for ETA Review” (July 6, 2016) at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (August 2016 Notice—Final Estimates, Appendix A) (hereafter “July 2016 ETA and JBS Memorandum”).

## **II. SUMMARY OF COMMENTS AND KEY CHANGES TO LSC’S ESTIMATES.**

In the second notice, 81 FR 6295 (February 5, 2016), LSC identified three areas for additional public comment: (1) ETA’s methodology and data after further analysis of the data was conducted; (2) newly proposed estimates of aliens within the agricultural worker population who are eligible under 45 C.F.R. § 1624.4 for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities; and (3) proposals of available and reliable state- or region-specific data for augmenting the ETA data in individual states. With this notice, LSC published a memorandum explaining LSC’s proposed methodology and estimates of the agricultural worker population eligible under 45 C.F.R. § 1626.4. *See* “Estimate of the Population of Agricultural Workers Eligible for LSC Funded Services Pursuant to 45 C.F.R. § 1626.4—Anti-Abuse Laws” (January 20, 2016)

available at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (February 2016 Notice—Revised Estimates, Appendix A).

LSC received one comment from the National Legal Aid and Defender Association (NLADA) Agricultural Worker Project Group. LSC also received comments from two grantees: Michigan Advocacy Program (MAP) and Puerto Rico Legal Services. Both comments are published at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data).

The comments expressed continued support for LSC’s efforts to update the estimates of agricultural workers in the United States who are eligible for LSC services. The comments also supported (with the exception discussed in Section E below) LSC’s proposed methodology and resulting estimates of aliens within the agricultural worker population eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities under 45 C.F.R. § 1626.4.

Generally, the concerns raised by the commenters fell into six categories. As discussed in detail below, LSC has revised its final estimates to incorporate all but two of the changes proposed in the comments.

***A. Concerns regarding the ETA estimates of eligible farmworker dependents.***

NLADA and Michigan Advocacy Program asserted that the ETA estimates of farmworker dependents for LSC-funded services (based on ETA’s “country of birth” method) were too low because they were based on what NLADA and MAP believed were two erroneous assumptions: (1) that foreign-born adult children (18 or older) would be “authorized” (that is, meet the eligibility requirements of Part 1626) only if

they had at least one parent or spouse born in the U.S., and (2) that spouses and other farmworker relatives in farmworker households would be authorized only if they themselves are U.S.-born.

Both commenters urged LSC to revise its estimates of dependents eligible for LSC-funded services by directing ETA to change these assumptions and include in the estimate of “authorized” dependents (1) all adult children of farmworkers whom the National Agricultural Workers Survey (NAWS) has identified as "authorized," not just those children born in the U.S., and (2) all spouses of farmworkers whom the NAWS has identified as "authorized," not just those spouses who are born in the U.S.

After reviewing these comments, ETA determined that a revision of the estimation methodology could provide a more accurate estimate of the number of authorized dependents. *See* “July 2016 ETA and JBS Memorandum.” Table V, which LSC is publishing on its website, shows the impact this revision has on the population estimates. *See* “Table V— Number of LSC-Eligible Agricultural Worker Dependents by State: Comparison of February 2016 and Final Estimates” at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (August 2016 Notice—Final Estimates, Tables I–VI).

***B. Concerns regarding the estimates of the number of agricultural workers with pending I-130 petitions; political asylum seekers; refugees; or individuals granted withholding of deportation, exclusion or removal.***

NLADA expressed concern that LSC’s estimates undercounted the number of agricultural workers or dependents who are authorized because (1) they have pending I-130 petitions and a requisite relationship with a U.S. citizen child,

spouse, or parent or (2) are political asylum seekers; refugees; or individuals granted withholding of deportation, exclusion or removal. The comments asserted that the NAWS survey does not adequately capture the relevant data because an interviewer, when asking about an individual's immigration status, is only required to list specific immigration statuses (such as a pending I-130 petition) if "necessary." The comments stated that many agricultural workers, in response to survey questions, correctly state that they are "unauthorized" but are not asked a follow-up question whether they have a pending I-130 petition or are in situations that may otherwise qualify them for LSC-funded services under 45 C.F.R. Part 1626 (LSC regulation providing categories of aliens eligible for legal assistance under anti-abuse laws and based on immigration status).

NLADA requested that LSC develop revised estimates based on data from governmental sources (e.g., U.S. Citizenship and Immigration Services or the State Department) and other "reputable studies." NLADA maintained that these data sources "should make it possible to estimate, at least on a national basis, the number" of farmworkers who would be eligible for LSC-funded services because they have pending I-130 petitions. NLADA asserted that "the same analysis applies to those who are LSC-eligible because they are asylum seekers, refugees and granted withholding of deportation and are LSC-eligible but who might not be identified through the NAWS survey."

LSC requested that ETA review these comments. After reviewing these comments, ETA determined that the NAWS would capture necessary information



about respondents who might be LSC-eligible because they are political asylum seekers, refugees, or have temporary protective status. Therefore, no adjustment in the estimation formula was needed to improve the accuracy of the estimates of these individuals.

ETA acknowledged that some respondents with pending I-130s, however, may not have been correctly identified, as the NAWS questionnaire does not include a question that directly asks if the respondent has a pending I-130 and, as a result, the methodology in the estimates published on February 5, 2016, could underestimate the number of these individuals who might be LSC-eligible. Accordingly, the estimation methodology was revised to improve the accuracy of this estimate. *See* “July 2016 ETA and JBS Memorandum.” LSC is publishing on its website Table IV, which identifies the effects this change has on the population estimates. *See* “Table IV— Number of LSC-Eligible Agricultural Workers by State: Comparison of February 2016 and Final Estimates” at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (August 2016 Notice—Final Estimates, Tables I–VI).

***C. Requests to use the most recent data on the number of H-2A and H-2B workers.***

Michigan Advocacy Program and NLADA requested that LSC revise its estimates to reflect more current data regarding the population of H-2A agricultural workers and H-2B forestry workers. The comments urged LSC to incorporate Department of Labor data on the number of H-2A and H-2B positions certified

nationwide in FY 2015 because these data demonstrate a substantial increase in the number of H-2A workers since 2012.

The estimates of the number and geographic distribution of agricultural workers eligible for LSC-funded services are based on a variety of 2012 data sources. Although there are more recent data for H-2A agricultural workers and H-2B forestry workers, more recent data are not available from the Census of Agriculture, which provided substantial data in the estimation methodology. JBS's recommendation, which ETA has endorsed, is to use 2012 data for H-2A agricultural workers and H-2B forestry workers for consistency with the 2012 data from the other information sources used in the estimation formula. *See* "July 2016 ETA and JBS Memorandum."

***D. Requests for LSC to reconsider the use of data and resulting estimates reported by the NAWS twelve-region sampling groups.***

NAWS data are reported for twelve-region sampling strata and six-region analysis groupings; the six region data have lower relative standard errors (RSEs) than the twelve region data. Both NLADA and Michigan Advocacy Program expressed concern with ETA's use of NAWS twelve-region sampling group data to estimate the state-level populations of agricultural workers, because reliance on NAWS twelve-region data produced less reliable estimates than would six-region data and resulted in characterizations of state farmworker populations in some states, which were inconsistent with the commenters' first-hand knowledge about the state-level demographics and status of farmworkers and their dependents. To

reduce the likelihood of these anomalies, the commenters urged LSC to revise its estimates of LSC-eligible agricultural workers by using the NAWS six-region data instead of the NAWS twelve-region data.

LSC asked ETA to consider these comments. ETA endorsed JBS's analysis that the use of the NAWS six-region data would result in more robust estimates because the RSEs of the estimates are lower at the six-region level than they are at twelve-region level. *See* "July 2016 ETA and JBS Memorandum." Accordingly, ETA provided and LSC will use revised estimates based on NAWS six-region data.

***E. Concerns over the calculation of the population eligible pursuant to anti-abuse provisions of 45 CFR § 1626.4.***

The comments from NLADA and Michigan Advocacy Program stated that LSC's estimates of the population of people who are eligible pursuant to the anti-abuse provisions of 45 CFR § 1626.4 were based on an incorrect poverty level standard. ETA agrees with these comments and has revised the estimates using the correct poverty level standard. LSC's final estimates reflect this correction. Table VI identifies the effects this change has on the population estimates. *See* "Table VI—Number of Unauthorized and Below-Poverty Farmworkers Eligible for LSC-Funded Services Pursuant to Anti-Abuse Provisions of 45 CFR § 1626.4 by State: Comparison of February 2016 and Final Estimates" at [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (August 2016 Notice—Final Estimates, Tables I–VI).

***F. Proposals to use alternate methodologies and data sources to estimate individual state agricultural worker populations.***

In response to the February 5, 2016 public notice, LSC received one proposal to use alternate methodologies and data sources to estimate agricultural worker populations for individual states: Michigan Advocacy Program proposed alternative methods, data sources and estimates of the agricultural worker population in Michigan. In response to the April 4, 2016 public notice, MAP provided additional information to support its proposed alternative methods and estimates. LSC asked ETA to analyze the methods, data sources and population estimates MAP proposed. ETA endorsed JBS's assessment that MAP's proposed methodology and data do not produce estimates that are more accurate than the published estimates because the majority of those data sources "do not have eligibility guidelines concerning household poverty and alien status that are consistent with the LSC criteria." These agencies were Migrant Health Centers that can provide. *See* "July 2016 ETA and JBS Memorandum" (JBS's Response to Recommendation 6). Therefore, LSC declines to adopt the alternate estimates provided by the Michigan Advocacy Program. Some of MAP's proposals were, in effect, accepted as a result of the changes in the ETA methodology discussed above in sections A and B.

Puerto Rico Legal Services also submitted additional data and comments regarding the agricultural worker population in Puerto Rico. In its comment, Puerto Rico Legal Services explained the inherent difficulty in calculating this population. LSC commends Puerto Rico Legal Services for working with local government

agencies to seek to obtain actual and realistic data concerning the number of local and migrant workers on the island. However, because these data have not yet been developed, LSC will not revise its estimates of the agricultural worker population in Puerto Rico.

### **III. CONCLUSION**

As discussed herein, LSC will implement these final estimates for Basic Field—Agricultural Worker grants by distributing funding among all of the existing Agricultural Worker grant service areas for 2017 grants at a 50% implementation level (compared with the 2016 distribution) and then for 2018 and successive years at a 100% implementation level. LSC will also obtain updated population estimates of agricultural workers every three years for recalculation on the same statutory cycle as LSC obtains updated poverty-population data from the U.S. Census Bureau for the distribution of LSC’s Basic Field Programs appropriation. LSC is publishing on its website the following revised tables showing the final estimates and their effects on Basic Field-Agricultural Worker grants (presuming for comparison constant total LSC funding for Basic Field Program grants during the relevant grant years). *See* [www.lsc.gov/ag-worker-data](http://www.lsc.gov/ag-worker-data) (August 2016 Notice—Final Estimates, Tables I–VI). Descriptions of these tables are included below.

#### **Table I**

Final National and State Estimates of the LSC-Eligible Agricultural Worker Population—Summary Table. This table provides summary information about the major data sources and calculations used to derive the updated estimates.

**Table II**

LSC-Eligible Agricultural Worker Population by State: Comparison of Current (Fiscal Year 2016) Population Estimates and Final Estimates. The data in this table show the differences between the final estimates of the agricultural worker population and the population estimates on which Fiscal Year 2016 grant allocations were based.

**Table III**

LSC-Eligible Agricultural Worker Population by State: Comparison of February 2016 Estimates and Final Estimates. The data in this table show the differences between the final estimates of the total LSC-eligible agricultural worker population and the estimates published in February 2016.

**Table IV**

Number of LSC-Eligible Agricultural Workers by State: Comparison of February 2016 and Final Estimates. The data in this table show the differences between the final estimates number of the number LSC-eligible agricultural workers and the estimates published in February 2016.

**Table V**

Number of LSC-Eligible Agricultural Worker Dependents by State: Comparison of February 2016 and Final Estimates. The data in this table show the differences between the final estimates of the number of agricultural worker dependents and the estimates published in February 2016.

**Table VI**

Number of Unauthorized and Below-Poverty Farmworkers Eligible for LSC-Funded Services Pursuant to Anti-Abuse Provisions of 45 CFR § 1626.4 by State:

Comparison of February 2016 and Final Estimates. The data in this table show the differences between the final estimates and the estimates published in February 2016 of the number of unauthorized and below-poverty farmworkers eligible for LSC-funded services pursuant to anti-abuse provisions of 45 CFR § 1626.4.

Dated: August 3, 2016

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